IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 20900 of 2007(K)

CC.40/2003 of J.M.F.C.,KARUNAGAPPALLY

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PETITIONER:

S. PRABHAKARAN,
KOTTUMPURATHU VEEDU, PADA NORTH, KARUNAGAPPALLY
(PROPRIETOR OF ANU BAKERY, PREM BUILDINGS,
PADA NORTH, KARUNAGAPPALLY).

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS:

K. RAJEEVAN,
MANNARATHU KIZHAKKATHIL, MARUTHOORKULANGARA SOUTH,
KARUNAGAPPALLY.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.No. 20900 of 2007 K

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Dated this the 9th day of June, 2007

JUDGMENT

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. Cognizance was taken as early as in 2003 as is revealed from the number assigned to the case. The case now appears to have reached the stage of defence evidence. The petitioner wanted the cheque to be sent to the expert. Why does he want it to be sent to the expert now? Obviously he now wants to raise a contention that the signature in the cheque is not his. The learned Magistrate evidently was called upon to exercise his discretion under Section 254(2) Cr.P.C. The learned Magistrate alertly took note of the reply to the notice of demand issued under Section 138 of the N.I. Act. A copy of the same is produced as Ext.P5. In Ext.P5 initially we find a denial that such cheque was not signed and given to the complainant. But later in the subsequent paragraph it is very clearly stated that the cheque was handed over as a signed blank cheque to another. Obviously the suggestion is that from such other, the complainant has come into possession of the cheque in question. The petitioner now

wants the cheque to be sent to the expert in order to support his denial of the signature in the cheque. The learned Magistrate felt that this was nothing but a ploy to prolong and protract the proceedings. The learned Magistrate proceeded to pass the impugned order. The petitioner claims to be aggrieved by the impugned order.

2. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to invoke and exercise. The extra ordinary constitutional jurisdiction under Article 226 of the Constitution is requested to be invoked. Such jurisdiction is to be invoked only sparingly and in exceptional cases, that too, only in aid of justice. Unless the conscience of the Court is satisfied that there is failure/miscarriage of justice or abuse of process of court resulting from the impugned order, such jurisdiction cannot and should not be invoked.

3. I shall carefully avoid any expression of opinion which may encumber the records or fetter the option of the contestants to take all contentions before the Magistrate. Suffice it to say that I am not satisfied that the impugned order requires correction by invocation of the jurisdiction of this Court under Section 482 Cr.P.C. The law frowns upon challenge against interlocutory orders in the course of trial. This policy of law is

reflected clearly in Section 397(2) Cr.P.C., which proscribes revisional challenge against interlocutory orders. Such orders will normally have to wait for their challenge and can be challenged along with the final orders that are to be passed in the prosecution by the learned Magistrate. I do not find any reasons at this stage to consider the acceptability of the impugned order on merits by invoking the powers under Article 226 of the Constitution or under Section 482 Cr.P.C.

4. This Writ Petition is in these circumstances dismissed. I may hasten to observe that the dismissal of this writ petition will not in any way fetter the rights of the petitioner to challenge the impugned order along with the final order after termination of the proceedings before the trial court. The same shall not also in any way fetter the rights of the petitioner to request the learned Magistrate to invoke his powers under Section 73 Cr.P.C. for comparison of the admitted signature vis-a-vis the signature in the cheque, which is attempted to be disputed now.

(R. BASANT)
Judge

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